

Appl. No. 10/616,430
Amdt. dated 11/10/04
Reply to Office Action of 8/10/04

Remarks

This amendment is responsive to the US Patent and Trademark Office Action mailed August 10, 2004.

Response to Rejections under 35 U.S.C. § 103

By way of the Office Action mailed August 10, 2004, the Examiner rejected Claims 24-31 under 35 U.S.C. § 103(a) as being unpatentable over Haffner et al. (U.S. Patent No. 5,514,470) (hereinafter "Haffner") in view of McCormack (U.S. Patent No. 5,695,868) (hereinafter "McCormack"). In the Office Action, the Examiner states that the Haffner reference teaches "a composite material comprising a necked nonwoven and an elastic layer that is attached to the necked nonwoven to allow expansion and retraction in the direction of the necking". The Examiner then goes on to state that Haffner does not specifically disclose the composite material comprising a non-elastic film layer. Haffner teaches an elastic composite material that includes an elastic film layer. Haffner defines "elastic" as "any material which, upon application of a biasing force, is stretchable, that is, elongatable, at least about 60 percent (i.e., to a stretched, biased length which is at least about 160 percent of its relaxed unbiased length), and which will immediately recover at least 55 percent of its elongation upon release of the stretching, elongating force" (col. 1, lines 63+). In contrast, present invention forms an elastic composite that includes a non-elastic film layer. Non-elastic is defined as "the sheet layers are made from polymers that are generally considered to be inelastic. In other words, use of such inelastic polymers to form the sheet layers would result in sheet layers which are not elastic". (top of page 9 of the present patent application). Haffner fails to disclose, teach or suggest such a non-elastic film layer.

The Examiner relies on McCormack to teach laminates that include nonelastic films and alleges that it would have been obvious to bond a non-elastic film to a necked nonwoven, presumably the necked nonwoven material described by Haffner. Applicant submits that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to do so. Haffner relies on an elastic sheet to maintain the elasticity of the composite. Thus, Haffner requires an elastic sheet. Applicants submit that the rejection made by the Examiner is improper because the proposed modification render the prior art unsatisfactory for its intended purpose, that is forming an elastic composite. (see MPEP page 2100-131 quoting *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984)) Moreover, the proposed modification cannot change the principle of operation of a reference (see also MPEP page 2100-131 quoting *In re Ratti*, 123 USPQ 349 (CCPA 1959))

McCormack does not disclose, teach or suggest an elastic composite. More importantly, McCormack does not disclose, teach or suggest an elastic composite that includes a non-elastic film

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nor does McCormack disclose, teach or suggest that substituting a non-elastic film in the composite described by Haffner will produce an elastic composite. McCormack teaches stretching to improve bereathability of films. Thus, Haffner, McCormack and Haffner in view of McCormack fail to disclose, teach or suggest a method for making a necked laminate that includes: providing a non-elastic neckable material, attaching a non-elastic neckable material to the non-elastic film to form a laminate, and stretching the laminate in a first dimension and forming striated rugosities in the non-elastic film layer. The present inventors discovered a method of producing an elastic composite that includes a nonelastic film. Prior art composites, i.e. Haffner relied on elastic materials. Incorporation of non-elastic materials as taught in the curret invention allows reduced costs by allowing the use of less expensive materials to produce elastic composites.


In summary, it is the Applicants' position that the rejection is improper and should be withdrawn. Accordingly, Applicants respectfully request the Examiner to reconsider the present patent application and promptly issue a Notice of Allowance.

Examiner Vo is invited and encouraged to telephone the undersigned at (770) 587-8620 should any issues remain after consideration of this response.

Please charge any prosecutorial fees which are due or that are necessary to keep the present patent application pending to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

Respectfully submitted,

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